UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, and SOUTHGATE DEVELOPMENT CO., Defendants.	CASE NO. C05-5447RJB ORDER APPROVING CONSENT DECREE AND AWARDING RESPONSE COSTS

This matter comes before the Court on the plaintiff's Motion to Enter Consent Decree Between United States and Defendant Southgate Development Co. (Dkt. 185), supplemental briefing thereon (Dkt. 203, 211), and the parties' Stipulation Regarding Air Stripper Costs (Dkt. 210). The Court has considered the pleadings filed in support of and in opposition to the motion, the parties' briefing, and the remainder of the file herein.

I. FACTUAL BACKGROUND

The Palermo Wellfield Superfund Site ("the Site") is defined by groundwater contaminant plumes in Tumwater, Washington at, and in the vicinity of, the Palermo Wellfield ("PWF") and Palermo neighborhood. The Palermo Wellfield provides drinking water for the City of Tumwater ("the City"), Washington. The Palermo Wellfield is adjacent to a residential neighborhood in the Palermo Valley, a lowland located in the Deschutes River floodplain. The neighborhood consists

of detached, single-family homes bordered on the southeast by the well field, to the northeast by the Tumwater Municipal Golf Course, and to the west by the Palermo Bluff. The Palermo Bluff, a sixty foot rise in elevation from east to west, separates the Palermo Valley (approximately 100 feet above sea level) from the Palermo Uplands (approximately 160 feet above sea level). The Palermo Bluff is approximately 800 feet west of the Palermo Wellfield. Continuing west from the Palermo Bluff, the Palermo Uplands encompasses commercial and residential parts of Tumwater. Interstate highway ("I-5") transects the Uplands portion of the Site from southwest to northeast. Groundwater flows generally from the west to the east/northeast.

In August of 1993, the City of Tumwater conducted routine drinking water quality testing and discovered trichloroethylene ("TCE") in water from three wells (Wells 2, 4, and 5) at the Palermo Wellfield. The Palermo Wellfield provides drinking water for 5,600 residents of the City of Tumwater. In one of the wells tested, the TCE level was over the drinking water standard maximum contaminant level ("MCL") of 5 parts per billion ("ppb"). The water was retested over the next several days, and the results were confirmed. The parties do not dispute that this contamination was attributable, in part, to a Washington State Department of Transportation ("WSDOT") testing laboratory operated during the late 1960s and early 1970s and, possibly, to a currently operated WSDOT materials testing lab. Other possible sources for the contamination, including the Southgate Dry Cleaners and the Brewery City Pizza location, have also been identified. The parties agree that TCE at the Site is attributable, in part, to biodegradation of perchloroethylene ("PCE") to TCE. There is no evidence in the record, and the parties did not offer evidence or testimony at trial, demonstrating the rate or extent of such biodegradation.

The City removed the three contaminated wells from service. The City then installed two new wells, which provided water capacity greater than the capacity of the wells taken out of service. 1048074.[1]

[1] In references to the administrative record, the Court cites the seven-digit document identification numbers of documents in the Certified Remedial Administrative Record and Certified Removal Administrative Record. Except as indicated, the Court has considered only documents in the Certified Removal Administrative Record when evaluating the removal action and only documents in the Certified Remedial Administrative record when evaluating the remedial action.

To address its water quality concerns, the City sought the Environmental Protection Agency's ("EPA") assistance in September of 1993. The EPA completed a Phase I CERCLA Assessment in March of 1995, a removal assessment at Southgate Dry Cleaners in May of 1995, an Expanded Site Investigation in 1996, and a second removal assessment in March of 1997. The Site was added to the National Priority List on April 7, 1997.

On July 3, 1997,[2] the EPA issued an Action Memorandum, authored by the EPA On-Scene Coordinator, selecting removal actions. 1048496. Later action memoranda approved a ceiling increase and an exemption of the two million dollar limit for removal actions and an exemption of the twelve month limit for removal actions. 1048789, 1105726. Removal actions were initiated at the Site in March of 1998. One such action was installation of a soil vapor extraction ("SVE") system at the former Southgate Dry Cleaners, the purpose of which was to remove PCE from soil and halt its release to groundwater. The SVE system began operation in 1998 and was decommissioned in June of 2000. The second component of the removal was the EPA's installation of two air strippers at the Palermo Wellfield. An air stripper transfers contaminants from water to air by blowing air upward as water flows downward. 1224288-0021. The air is then treated before being discharged. *Id.* Construction of the air stripping system was completed in February of 1999.

On November 16, 1998, the Regional Administrator for EPA Region 10 signed a Record of Decision ("ROD") documenting the long-term remedial action that the EPA selected for the Site. The selected remedy incorporated the continued operation of the wellhead treatment and SVE systems. It also selected construction of a subdrain ("french drain") system to collect groundwater containing TCE and PCE surfacing in the area of residences at the base of the Palermo Bluff. On-site construction of the subdrain system began on August 8, 2000, and the system continues to operate.

II. PROCEDURAL BACKGROUND

The United States brought suit against the Washington State Department of

[2] The Action Memorandum is dated June 27, 1997, but was signed with approval on July 3, 1997.

Transportation ("WSDOT") and Southgate Development Co., Inc. ("Southgate") in federal court, asserting that the defendants are liable under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607(a), 9613(g)(2), for "response costs" incurred and to be incurred by the EPA and the U.S. Department of Justice as a result of releases of hazardous substances at the Palermo Wellfield Superfund Site in Tumwater, Washington. The United States seeks a total of $11,188,296.16 from the WSDOT. Dkt. 195 at 15. The United States does not seek costs of the SVE from the WSDOT. Dkt. 165 at 2.

On October 4, 2006, the parties informed the Court that the claims between the plaintiff and Southgate had been resolved. Dkt. 132. The parties were given until December 15, 2006, to file their settlement and dismissal paperwork. Dkt. 161.

A proposed consent decree was filed with the Court on December 14, 2006. Dkt. 163-2. The United States published notice of the proposed consent decree in the Federal Register and accepted public comments for 30 days. Dkt. 185 at 7. Under the terms of the proposed consent decree, Southgate would pay $1,125,000, which represents $518,131.92 spent removing PCE from the Southgate mall property and a share of the costs associated with Site-wide investigation and the french drain remedial action. *Id.* at 2. The plaintiff acknowledges that since execution of the proposed consent decree, the EPA discovered that $156,302.07 was erroneously excluded from the amount of SVE response costs allocated to Southgate. Dkt. 195 at 13-14.

The United States received one comment from the WSDOT, a defendant in this matter. Dkt. 185 at 2. The plaintiff sought approval and entry of the proposed consent decree. Dkt. 185. From the briefing before it, the Court was unable to determine whether the proposed consent decree represents adequate compensation for response costs, whether the plaintiff reached a reasonable bargain with respect to Southgate, whether the proposed consent decree's allocation of costs is substantively reasonable, and whether the proposed consent decree is consistent with CERCLA. Dkt. 200 at 7, 10, 11. The Court therefore re-noted the Motion to Enter Consent Decree. *Id.* at 17.

On November 15, 2006, the Court granted summary judgment in favor of the plaintiff as

to the WSDOT's liability. Dkt. 160. A bench trial was conducted on January 10 and January 12, 2007. Dkt. 176, 178. The Court issued a written opinion, ruling that the EPA's decision to conduct a removal was arbitrary and capricious, that the air strippers were improperly characterized as a removal action rather than as a remedy, and that joint and several liability applies. Dkt. 181 at 26, 35. The Court sought further briefing from the parties addressing what portion of the response costs is recoverable. *Id.* at 28.

The parties provided such briefing, and the Court held the plaintiff is not entitled to recovery of response costs associated with the design and installation of the air strippers. Dkt. 200 at 14. Because there were discrepancies in the parties' characterization of response costs, the Court noted that such discrepancies could be resolved in an evidentiary hearing or by the stipulation of the parties. *Id.* at 16. The Court afforded an opportunity for the parties to attempt to reach agreement as to the costs associated with air strippers. The parties have reached agreement and filed a stipulation listing $5,646,676 as the amount of response costs incurred for the design and installation of the air strippers. Dkt. 210.

Having received supplemental briefing from both parties, the entry of the consent decree and allocation of response costs are issues ripe for consideration.

III. CERCLA

CERCLA was enacted to facilitate "expeditious and efficient cleanup of hazardous waste sites." *Carson Harbor Village, Ltd. v. Unocal Corp.*, 270 F.3d 863, 880 (9th Cir. 2001). Its secondary purpose is to hold responsible parties accountable for cleanup efforts. *Id.* CERCLA accomplishes these goals by imposing strict liability on owners and operators of facilities where releases of hazardous substances occur. *Id.* at 870. This liability is joint and several, subject to statutory defenses set forth in 42 U.S.C. §9607(b). *See California v. Montrose Chemical Corp. of California*, 104 F.3d 1507, 1518 n.9 (9th Cir. 1997).

To recover its costs for engaging in response actions, the plaintiff must prove as follows: (1) the site at which the actual or threatened release of hazardous substances occurred constitutes a "facility" under 42 U.S.C. §9601(9); (2) there was a "release" or "threatened release" of a hazardous substance; (3) the party is within one of the four classes of persons subject to liability

under 42 U.S.C. §9607(a); and (4) the EPA incurred response costs in responding to the actual or threatened release. *See U.S. v. Chapman*, 146 F.3d 1166, 1169 (9th Cir. 1998); 42 U.S.C. §9607(a)(4)(A).

The burden then shifts to the defendant to prove that the government's action in responding was inconsistent with the National Contingency Plan ("NCP"). *Chapman*, 146 F.3d at 1169. To prove inconsistency with the NCP, the defendant must demonstrate that the response actions were arbitrary and capricious or otherwise not in accordance with law. *See Washington State Dept. of Transp. v. Washington Natural Gas Co.*, 59 F.3d 793, 802 (9th Cir. 1995). If the defendant succeeds in proving that the selection of the response was arbitrary and capricious or otherwise not in accordance with law, the defendant is not necessarily relieved from payment of all response costs. Instead, the government is entitled to recover response costs or damages "not inconsistent with the national contingency plan." 42 U.S.C. §9613(j).

IV. DISCUSSION

A. PROPOSED CONSENT DECREE

In deciding whether to approve a CERCLA settlement, the reviewing court's role is to "scrutinize" the settlement, but the EPA is entitled to some deference. *Montrose*, 50 F.3d at 747. When "faced with consent decrees executed in good faith and at arm's length between the EPA and counselled polluters, [district courts] must look at the big picture, leaving interstitial details largely to the agency's informed judgment." *U.S. v. Cannons Engineering Corp.*, 899 F.2d 79, 94 (1st Cir. 1990), *cited with approval in Montrose*, 50 F.3d at 746. Courts evaluate settlements on the basis of three, non-mutually exclusive criteria: (1) reasonableness, (2) fairness, and (3) consistency with CERCLA's purposes. *See Montrose*, 50 F.3d at 743; *Cannons Engineering Corp.*, 899 F.2d at 90.

1. Reasonableness

The determination of whether a settlement is reasonable is a "a multifaceted exercise" requiring consideration of several factors: the nature and extent of the hazards at the cleanup site; the degree to which the consent decree will adequately address the hazards present at the site; the possible alternative approaches for remedying the hazards; the extent to which the consent decree

furthers the goals of the statutes that form the basis of the litigation; the extent to which the consent decree compensates the public for actual and anticipated response costs; the extent to which the consent decree is in the public's interest; and the relative strengths of the parties' litigating positions. *See U.S. v. Cannons Engineering Corp.*, 720 F. Supp. 1027, 1038 (D.Mass. 1989) *aff'd*, *Cannons Engineering Corp.*, 899 F.2d 79; *Cannons Engineering Corp.*, 899 F.2d at 89, 90. In this case, the proposed consent decree does not embody the EPA's attempts to address environmental and public health concerns and is primarily "recoupment of cleanup costs already spent." *See Cannons Engineering Corp.*, 899 F.2d at 89. The Court therefore turns its attention to factors relating to the plaintiff's recovery of response costs.

a. Satisfactory Compensation for Actual and Anticipated Response Costs

A settlement should satisfactorily compensate the public for both actual and anticipated costs of remedial and response measures. *Cannons Engineering Corp.*, 899 F.2d at 90. Resolution of this question "can be enormously complex." *Id.* The EPA need not demonstrate "mathematical precision," and courts defer to the EPA "[i]f the figures relied upon derive in a sensible way from a plausible interpretation of the record." *Id.*

In this case, the proposed consent decree embodies response costs for the SVE system, attributable only to Southgate, and response costs to which joint and several liability applies. The plaintiff contends that the proposed consent decree represents compensation for $674,433.99 spent on the SVE system. Dkt. 203 at 3. To the extent that the settlement compensates the plaintiff for this amount, the settlement represents satisfactory compensation for actual response costs.

The Court has previously expressed reluctance to enter the consent decree because it was unclear that the settlement compensated the plaintiff for the $156,302.07 recently discovered as omitted from the costs allocated to Southgate and because it was unclear which joint and several response costs are covered by the proposed consent decree. Dkt. 200 at 7.

The plaintiff now contends that the consent decree does encompass the $156,302.07 erroneously omitted from the costs allocated to Southgate. Dkt. 203 at 2. The Court notes that the consent decree was not modified after the plaintiff discovered that $156,302.07 had been

overlooked when calculating the costs of the SVE system. According to the plaintiff, the consent decree also encompasses joint and several costs including the Expanded Site Investigation, Brewery City Pizza Removal Assessment, Remedial Investigation and Feasibility Study, and other cleanup costs. Dkt. 203 at 3-4. While the proposed consent decree may not compensate the public with mathematical precision, the Court is persuaded that the entry of the proposed consent decree would satisfactorily compensate the public.

b. Public Interest

To determine whether a settlement is reasonable, courts may consider the extent to which the settlement is in the public interest. *Cannons Engineering Corp.*, 720 F. Supp. at 1038. The Court has previously held that the settlement is consistent with the public interest. Dkt. 200 at 7.

c. Relative Strengths of the Parties' Litigation Positions

In determining the reasonableness of a settlement, courts compare the parties' litigating positions because "the reasonableness of a proposed settlement must take into account foreseeable risks of loss." *Cannons Engineering Corp.*, 899 F.2d at 90. The government is expected to "drive a harder bargain" if it has a strong case. *Id.*

In its supplemental briefing, the plaintiff contends that its settlement negotiation with Southgate was based on the concern that Southgate might succeed in limiting its liability to only the response costs associated with the SVE system. Dkt. 203 at 5. At the time of mediation, the plaintiff was concerned that it would be difficult to attribute TCE remedied by the french drain to Southgate. *Id.* at 5. The Court has previously held that "not all of the TCE at the Site is attributable to releases from WSDOT facilities" but that "[e]ven with the aid of expert testimony, the record does not demonstrate the extent to which contaminants captured by the french drain are attributable to the WSDOT or to other responsible parties." Dkt. 181 at 34-35. The WSDOT cites evidence in the administrative record demonstrating that Southgate was a source of TCE. *See* 1101038-0106 ("Southgate Dry Cleaners has been identified as the PCE source, with a portion of the PCE degrading to TCE."); 1101037-0029 ("Southgate Dry Cleaners may also be a source of TCE observed in the area, because PCE is apparently being transformed into TCE."); 1105220-0030 (same). Evidence that Southgate was a source of TCE would have bolstered the

plaintiff's case against Southgate. Nevertheless, this evidence does not persuade the Court that the plaintiff should have driven a harder bargain with Southgate.

d. Conclusion

The Court concludes that the plaintiff's settlement with Southgate is reasonable. It represents satisfactory compensation for actual and anticipated response costs attributable to Southgate, is consistent with the public interest, and is fairly based on the relative litigation positions of the parties.

2. Fairness

Fairness has procedural and substantive components. *Montrose*, 50 F.3d at 746 ("(1) the product of a procedurally fair process, and (2) substantively fair to the parties in light of a reasonable reading of the facts"). Courts should evaluate the fairness of a consent decree from the standpoint of non-settling defendants, but the effect on such defendants is not determinative. *Cannons Engineering Corp.*, 720 F. Supp. at 1040. The Court having previously determined that the settlement process was procedurally fair, the Court now turns its attention to the issue of substantive fairness. *See* Dkt. 200 at 8.

With regard to substantive fairness, "settlement terms must be based upon, and roughly correlated with, some acceptable measure of comparative fault, apportioning liability among the settling parties according to rational (if necessarily imprecise) estimates of how much harm each PRP has done." *Cannons Engineering Corp.*, 899 F.2d at 87. There is no universal method for measuring comparative fault, and the appropriate measure depends upon the factual circumstances. *See id.* Courts should uphold the EPA's formula for measuring comparative fault and allocating liability if " the agency supplies a plausible explanation for it, welding some reasonable linkage between the factors it includes in its formula or scheme and the proportionate shares of the settling PRPs." *Id.* The reviewing court must afford deference to an agency's settlement, but the true measure of that deference depends upon the persuasiveness of the agency's proposal and rationale. *Montrose,* 50 F.3d at 746. In other words, the agency's allocation of fault should be upheld unless it is "arbitrary, capricious, and devoid of a rational basis." *Cannons Engineering Corp.*, 899 F.2d at 87.

One method of assessing comparative fault is to determine the proportional relationship between (1) the amount of money to be paid by the settling defendant and (2) the government's estimate of total potential damages. *Montrose*, 50 F.3d at 747. Courts may consider the ability of the government to collect from non-settling defendants and may include reasonable and justified discounts, such as for litigation risks and time savings. *Id.*

The Court ordered supplemental briefing on this issue because the United States "offer[ed] no method of assessing the comparative fault of Southgate and the WSDOT, contending only that the WSDOT is more culpable than Southgate and that Southgate's assets are limited." Dkt. 200 at 9. The Court encouraged the United States to consider the identity of expenditures as an alternative theory for allocating response costs. *Id.* at 10. The Court held that "[a]t a minimum, the plaintiff should identify the response costs covered by the amount that Southgate has agreed to pay." *Id.*

The plaintiff's supplemental briefing addresses this issue and provides a theory for allocating response costs between Southgate and the WSDOT based upon what the parties knew at the time the settlement was reached. Specifically, the United States determined that Southgate was responsible for roughly $500,000 spend on the SVE system and that the WSDOT was responsible for roughly $600,000 spent on the air strippers. Dkt. 203 at 7-8. Based upon these figures, the United States and Southgate crafted a settlement whereby Southgate would be responsible for approximately ten percent of the joint and several response costs. *Id.* This is an admittedly imprecise formula and it does not take into account the Court's later ruling that the response costs associated with the air strippers are not recoverable from the WSDOT, and it does not reflect the actual cost of the SVE system ($674,433.99). Dkt. 203 at 7; Dkt. 211 at 4. These later developments were not simply not known at the time of the settlement. The WSDOT apparently contends that the plaintiff should have known that it would not prevail in its attempt to recover response costs for the air strippers and should have crafted a different settlement with Southgate on the basis of that knowledge.

The Court should not hold the plaintiff to such a standard. Notably, the plaintiff's arguments regarding the air strippers survived summary judgment. Dkt. 160 at 11 (Order holding

that "the administrative record evidences increased groundwater contamination over time and a threat of upgradient chemicals migrating to endanger uncontaminated wells sufficient to rebut the charge that the EPA was arbitrary and capricious."). Moreover, there is insufficient evidence to conclude that the EPA's omission of $156,302.07 when allocating costs of the SVE system was anything other than an inadvertent mistake. *See* Dkt. 195 at 14.

The WSDOT offers other ways in which to compare the defendants' fault. Dkt. 211 at 7-8. While the United States certainly could have reached a different settlement with Southgate, the WSDOT does not persuade the Court that the settlement ultimately reached is substantively unfair. The terms of the proposed consent decree roughly correlate with an acceptable measure of comparative fault such that the Court should decline to rule that the proposed consent decree is arbitrary, capricious, and devoid of a rational basis.

The Court also invited supplemental briefing to explain the effect of any recovery on "the Non-Ace/Aetna Policies." Dkt. 200 at 10. In response, the plaintiff has modified the Trust Agreement to clarify that recovery from Non-Ace/Aetna insurers will inure to the benefit of the Palermo Wellfield Special Account in the EPA Hazardous Substance Superfund. Dkt. 203 at 9; Dkt. 203-3 at 2. The United States and the WSDOT are in agreement that any recovery on these policies will reduce the amount of future response costs for which the WSDOT is otherwise liable. Dkt. 193 at 10; Dkt. 190 at 9. The consent decree, to which the WSDOT is not a party, need not address its effect on the WSDOT's liability.

Finally, the plaintiff contends that the proposed consent decree is substantively fair in its consideration of Southgate's ability to pay. Dkt. 203 at 10. During settlement negotiations, Southgate's assets were described as follows: (1) $60,000 in annual net rent income and (2) real property assessed at $1.9 million subject to a mortgage of approximately $500,000. Dkt. 203 at 10-11. The terms of the proposed settlement decree reasonably correlate with Southgate's ability to pay. Based upon the parties' supplemental briefing, the Court should hold that the proposed consent decree is substantively fair.

3. Consistency with CERCLA

The two major policy concerns underlying CERCLA are the desire to equip the federal

government with the tools necessary to promptly and effectively respond to problems resulting from hazardous waste disposal and to require parties responsible for those problems to bear the costs of remedying the harm. *Cannons Engineering Corp.*, 899 F.2d at 90-91. CERCLA's overarching principles are accountability, the desirability of an unsullied environment, and promptness of response activities. *Id.* at 91.

The Court has previously declined to rule that the proposed consent decree is consistent with CERCLA because it was unclear how Southgate's payments under the consent decree corresponded the overall harm at the Site and whether any response costs covered by the proposed consent decree resulted from actions deemed not recoverable from the WSDOT. Based upon the plaintiff's supplemental briefing regarding the theory for allocating response costs between Southgate and the WSDOT, addressed in more detail above, the Court should hold that the proposed consent decree appropriately holds Southgate accountable by requiring it to bear a reasonable proportion of the joint and several response costs.

4. Other Concerns

The Court also invited the parties to address two additional issues in their supplemental briefing: (1) the qualifications and experience of the named trustee, Daniel J. Silver, and (2) the Trust Agreement's limitation of the trustee's liability to gross negligence or willful misconduct. Dkt. 200 at 11-12.

The plaintiff has sufficiently addressed these concerns. First, the plaintiff has provided the Court with a copy of Mr. Silver's resume, which demonstrates that Mr. Silver has experience serving as a trustee for environmental cleanup trusts, as Deputy Director of the Washington State Department of Ecology, and in various other capacities sufficient to allay concerns as to Mr. Silver's background and qualifications. Second, the plaintiff has modified the Trust Agreement to clarify that the trustee owes fiduciary duties to the beneficiary.

5. Conclusion

The Court concludes that entry of the proposed consent decree is proper. The settlement reached by the United States and Southgate is reasonable, requiring a party allegedly responsible for harm to the environment to bear the costs of remedying that harm. The settlement was both

procedurally and substantively fair. Based upon the information known to the parties at the time of settlement and the risks of litigating the legal issues, the parties reached a settlement that roughly correlates with an acceptable measure of Southgate's comparable fault and appropriately considers Southgate's ability to pay. Finally, the Court concludes that the proposed consent decree is consistent with CERCLA's underlying policies.

B. AWARD OF RESPONSE COSTS

Following a bench trial, the Court issued an Opinion in which it held that the removal action, installation of the air strippers, was inconsistent with the National Contingency Plan. Dkt. 181 at 22. The Court also held that the selection of the french drain as part of the remedial action was not arbitrary and capricious and that the harm addressed by the french drain was not divisible. *Id.* at 29, 35. Having concluded that the EPA was arbitrary and capricious only as to the removal action, the Court was tasked with determining what portion of response costs were recoverable. Because the WSDOT had not identified which response costs were associated with the removal and should be disallowed, the Court ordered more briefing on the issue of damages. *Id.* at 27, 36-37. The Court ordered the WSDOT to file a brief addressing which portion of the response costs the WSDOT may avoid in light of the Court's Opinion. *Id.* at 37.

Based upon the parties' briefing, the Court held that the plaintiff is not entitled to recovery of response costs associated with the design and installation of the air strippers. Dkt. 200 at 14. The Court provided the parties an opportunity to stipulate to certain cost discrepancies and declined to award damages until the Court determined whether entry of the consent decree was proper. *Id.* at 15-16.

The parties now agree that the EPA incurred $5,646,676 in response costs associated with installation and design of the air strippers. Dkt. 210. Accordingly, the United States now asks that the Court enter judgment against the WSDOT for $5,541,620.16 plus interest, which represents costs for unreimbursed costs incurred through December 31, 2005, excluding costs associated with the design and installation of the air strippers and costs associated with the SVE system. Dkt. 195 at 15; Dkt. 210 at 1. Having determined that entry of the proposed consent decree is proper and the parties having stipulated to the amount of unrecoverable costs associated with the air

strippers, the Clerk should enter judgment in favor of the United States for $5,541,620.16 plus interest.

V. ORDER

Therefore, it is hereby

ORDERED that the Court approves the proposed consent decree. It is further

ORDERED that the United States is awarded $5,541,620.16 plus prejudgment interest. It is further

ORDERED that the Clerk shall enter judgment on July 5, 2007, in favor of the United States for $5,541,620.16 plus prejudgment interest accruing from the later of (1) the date payment of a specified amount was demanded in writing, or (2) the date of the expenditures concerned, pursuant to 42 U.S.C. §9607(a)(4). The parties should submit their prejudgement interest figures to each other and to the Court before July 5, 2007.

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

DATED this 20th day of June, 2007.

Robert J. Bryan
United States District Judge